

CHAPTER 13
COURT-APPOINTED COUNSEL—ELIGIBILITY GUIDELINES
AND REPAYMENT

493—13.1(13B,815) Definitions. As used in these rules, unless the context otherwise requires, the following definitions apply:

“*Applicant*” means a person requesting legal assistance by appointed counsel.

“*Assets*” means all resources or possessions belonging to the applicant which can be readily converted to cash within a reasonable period of time without causing substantial hardship or jeopardizing the applicant’s ability to maintain a home or employment.

“*Child*” or “*juvenile*” means a person as defined in Iowa Code chapter 232.

“*Family*” means the following persons living within the same residence. The:

1. Applicant,
2. Applicant’s spouse, including a common-law spouse,
3. Applicant’s child(ren).

“*Financial statement*” means a full written disclosure of all current income, assets, liabilities, dependents, and other information required to determine if an applicant qualifies for legal assistance by an appointed attorney.

“*Governmental assistance program*” means any public assistance program from which an applicant is receiving assistance.

“*Household*” means, for purposes of determining income, assets, and liabilities, the following persons living within the same residence. The:

1. Applicant,
2. Applicant’s legal or common-law spouse.

“*Income*” means the total money received from all sources and includes: remuneration received during a period of time in exchange for labor, products, or services; money received from unemployment or worker’s compensation, social security, public assistance programs, tax refunds, prize winnings, pensions, or gifts; money received as a profit from financial investments; and money received from any other source as specified in these rules.

“*Liabilities*” means all living expenses, business or farm expenses, fixed debts and obligations including federal, state and local taxes.

“*Poverty income*” means the annual poverty income guidelines established by the United States Department of Health and Human Services (DHHS).

493—13.2(13B,815) Eligibility. The eligibility of any person for legal assistance by an appointed attorney shall be determined in accordance with Iowa Code sections 13B.10 and 815.9 and with the guidelines set forth in these rules. Any person who is eligible for appointed counsel may be required by the court to contribute all or part of the cost of the person’s legal representation.

493—13.3(13B,815) Income guidelines. Annually, the state public defender shall provide information to the court showing the most recently revised poverty income guidelines as published by the United States Department of Health and Human Services (DHHS).

493—13.4(13B,815) Designation of eligibility reviewer. The chief judge of each judicial district shall designate the person(s) or entity to evaluate the eligibility of persons for legal assistance by an appointed attorney.

493—13.5(13B,815) Application. Any person claiming to be indigent or partially indigent shall have an indigency evaluation done before being provided representation. The person must provide information on an Application for Appointment of Counsel and Financial Statement and Order form. The financial statement shall be completed by the applicant as an accurate account of the applicant's:

1. Family size,
2. Income,
3. Assets,
4. Debts and expenses, and
5. Other information as required.

13.5(1) Child applicant. If the applicant is a child, the financial statement shall be completed by the child's parent, guardian, or custodian.

13.5(2) Family. The applicant shall provide information which accurately represents the names, ages and relationship of all family members who are supported by and live with the applicant.

13.5(3) Income. The applicant shall provide income information which accurately represents the total gross income received or reasonably anticipated to be received in the month of application by the applicant and the applicant's spouse, if living within the same residence. Income includes the following items for eligibility purposes:

- a. Wages and salary, bonuses, commissions, income from self-employment;
- b. Unemployment compensation and worker's compensation;
- c. Regular social security payments and pensions, including SSI and SSA payments;
- d. Veteran's benefits and strike benefits;
- e. Other pensions;
- f. Alimony and child support being regularly received;
- g. Any governmental assistance program, including AFDC, ADC/FIP, general relief, food stamps, housing assistance, heating assistance;
- h. Tax refunds;
- i. Military family allotments;
- j. Annuity and insurance payments;
- k. Income from dividends, interest, rents, royalties, estates, trusts, and other investments;
- l. Money received from: (1) the sale of real and personal property, (2) prize winnings, (3) a gift, (4) insurance payments to compensate for injury, and (5) educational grants.

13.5(4) Household income. If the applicant's spouse is employed, the employment data shall be provided. The term "household income" shall include any of the items identified as income in subrule 13.5(3) belonging to the applicant and the applicant's spouse who is a member of the applicant's household unless the spouse is the alleged victim in the offense charged.

13.5(5) Pay slip. If employed, the applicant shall include the applicant's most recent pay slip with the completed financial statement. The parent(s), guardian(s), or custodian(s) of a child applicant shall include their most recent pay slips with the completed financial statement.

13.5(6) Assets. The applicant shall provide information which accurately represents the total assets owned by the applicant, whether the assets are the sole property of the applicant or owned jointly with another. The following are countable assets for eligibility purposes and include but are not limited to:

- a. The equity value of any real estate;
- b. Money received from the sale of any real and personal property;
- c. Money received to compensate for injury and damage;
- d. Cash on hand as well as in checking and savings accounts, stocks, bonds, certificates of deposit, tax refunds, prize winnings;
- e. Other investments;
- f. The value of motor vehicles, collections, antiques, educational grants and any other readily available resources;
- g. Any possessions held in joint ownership with another.

13.5(7) *Household assets.* The term “household assets” shall include any of the items identified in this rule as assets belonging to the applicant and the applicant’s spouse who is a member of the applicant’s household unless the spouse is the alleged victim in the offense charged.

13.5(8) *Child’s income and assets.* The income and assets belonging to a child member of the household are not included in the financial statement unless the financial statement is requesting legal representation for the child in a delinquency case.

13.5(9) *Liabilities.* The applicant shall provide information which accurately represents the total monthly debts and expenses for which the applicant and the applicant’s spouse, if a member of the applicant’s household, are responsible. Liabilities include the following items for eligibility purposes:

- a. All household living expenses;
- b. Business and farm cash expenses (not including depreciation or other noncash deductions);
- c. Fixed debts and obligations for economic necessities on which the person has been making continuous and timely payments;
- d. Federal, state and local taxes;
- e. Utilities;
- f. Child support and alimony payments when the payments have been made in a timely manner;
- g. Child care expenses;
- h. Medical expenses;
- i. Other actual expenses the court deems to be relevant.

13.5(10) *Additional information.* The applicant shall provide other information necessary to determine the applicant’s eligibility for appointed counsel.

a. The applicant or the child applicant’s parent(s), guardian(s), or custodian(s) may be required by the court to provide a copy of their most recent federal income tax return(s).

b. The applicant or the child applicant’s parent(s), guardian(s), or custodian(s) may be required by the court to provide verification of income or any other information provided in the financial statement.

13.5(11) *Affidavit.* The applicant shall attest, in writing, to the accuracy of the information contained on the financial statement. Any applicant who knowingly submits a false financial statement for the purpose of obtaining legal assistance by appointed counsel commits a fraudulent practice.

13.5(12) *Changes to financial statement.* If the applicant is assigned a court-appointed attorney, the applicant must, prior to the completion of the case, inform the court-appointed attorney or the court of any changes that have occurred in the applicant’s financial situation since the financial statement was completed. The court-appointed attorney shall advise the court of any reported changes in the applicant’s financial situation.

493—13.6(13B,815) *Evaluation of financial statement.* The court’s designated eligibility reviewer shall evaluate the applicant’s completed financial statement and make a recommendation to the court concerning the applicant’s eligibility for appointed counsel. For the purposes of calculating whether an applicant is totally indigent, partially indigent, or ineligible for appointed counsel, the following shall be considered.

13.6(1) *Family size.* The eligibility reviewer shall determine the size of the applicant’s family. The total family size includes the following persons living within the same residence: the applicant, the applicant’s spouse, and the applicant’s child(ren) as indicated on the financial statement.

13.6(2) Household income. The applicant's income, or the combined income of the applicant and the applicant's spouse, if living within the same residence, shall be used for determining an applicant's household income.

a. The income of the applicant's spouse shall be considered unless the applicant's spouse is the alleged victim in the offense charged.

b. In juvenile proceedings, the income of both parents shall be considered to determine whether affected children are indigent. If a child's parents are divorced, the household income of each parent shall be considered separately.

c. Any income received by a child is not included as household income unless:

(1) The child is requesting representation in a delinquency case; or

(2) The child is under a conservatorship or is the beneficiary of trust proceeds.

13.6(3) DHHS poverty income guidelines. The applicant's family size and household income shall be compared to the DHHS poverty income guidelines.

a. Any applicant having a household income of 150 percent or less of the DHHS poverty income guidelines shall be considered indigent.

b. If an applicant's household income is more than 150 percent of the DHHS poverty income guidelines, the applicant is not considered to be indigent. However, the eligibility reviewer may recommend to the court that the applicant be found partially indigent as specified in subrule 13.6(7).

13.6(4) Household assets and expenses. During the review of the applicant's financial statement, the eligibility reviewer shall also consider:

a. The value of assets owned by the applicant, whether held separately or jointly with another;

b. The applicant's household liabilities unless the spouse was the victim of the offense allegedly committed by the applicant; and

c. Any assets owned by a child if the child is requesting representation in a delinquency case.

13.6(5) Additional information. The court may require other information from the applicant or the applicant's parent(s), guardian(s), or custodian(s) necessary to determine the applicant's eligibility for appointed counsel. Other information includes but is not limited to:

a. A copy of the most recent federal income tax return;

b. Verification of income or of any other information provided by the applicant in the financial statement.

13.6(6) Other considerations. If an applicant's household income exceeds 150 percent of the DHHS poverty income guidelines, the eligibility reviewer shall give further consideration to the following:

a. Current income prospects, taking into account seasonal variations in income;

b. Age or physical infirmity of household members;

c. The estimated cost of obtaining private legal representation with respect to the particular matter for which assistance is sought;

d. The nature of the criminal charge;

e. The anticipated complexity of the legal representation.

13.6(7) Finding of partial indigency. An applicant whose household income exceeds 150 percent of the DHHS poverty income guidelines may be determined to be partially indigent. In evaluating the applicant for partial indigency, the eligibility reviewer shall take into consideration the applicant's household assets and liabilities as well as the additional factors set forth in subrule 13.6(6). If the applicant's particular circumstances demonstrate that not appointing counsel would cause the applicant "substantial hardship" to either obtain counsel or provide for the applicant's family, the eligibility reviewer may recommend to the court that the applicant be found partially indigent. If the court finds that an applicant is partially indigent, the court shall prepare a finding of partial indigency. The finding of partial indigency shall:

a. Be in writing;

b. Set forth the reasons for finding the "substantial hardship"; and

c. Include a consideration of the factors set forth in subrule 13.6(6).

13.6(8) Recommendation to the court. The eligibility reviewer shall advise the court as to the applicant's eligibility for appointed counsel, whether a finding of partial indigency exists, and the applicant's ability to contribute to the cost of representation.

493—13.7(13B,815) Directive of court. Based on the recommendation of the eligibility reviewer, the court shall make the determination of the applicant's eligibility for appointed counsel and any sums to be contributed to the cost of the legal representation by the applicant or the child applicant's parent(s), guardian(s), or custodian(s).

493—13.8(13B,815) Adverse actions. An application may be denied when it has been determined by the court that:

1. The applicant's household income exceeds 150 percent of the DHHS poverty income guidelines and it has been determined that a "substantial hardship" would not be caused if appointed counsel was not appointed.
2. Although the applicant's household income does not exceed 150 percent of the DHHS poverty income guidelines, the applicant has sufficient assets to cover the anticipated cost of legal representation.
3. The applicant's financial statement is not an accurate account of the applicant's financial circumstances.

493—13.9(13B,815) Payment responsibility. Any applicant who is assigned a court-appointed attorney may be required by the court to contribute all or part of the cost of the applicant's legal representation.

13.9(1) If an applicant's household income is 100 percent or below of the DHHS poverty income guidelines, the applicant shall be found to be totally indigent and shall not be requested to contribute to the cost of legal representation unless the applicant's household assets are sufficient to contribute a reasonable sum to the cost of representation. A future restitution order may be issued by the court if there is a change in the applicant's financial situation.

13.9(2) If an applicant's household income is more than 100 percent but less than 150 percent of the DHHS poverty income guidelines, the applicant shall during the pendency of the case contribute at least \$100 for advance recovery of appointed attorney fees. The court may require the applicant to contribute a greater sum to the cost of the legal representation based on the value of the applicant's household assets. Any contributions ordered pursuant to this subrule shall be deemed collected prior to the collection of any fines, surcharge or restitution.

13.9(3) If an applicant's household income is more than 150 percent but less than 185 percent of the DHHS poverty income guidelines and the applicant is found to be partially indigent, the applicant shall during the pendency of the case contribute at least \$200 for advance recovery of appointed attorney fees. The court may require the applicant to contribute a greater sum to the cost of the legal representation based on the value of the applicant's household assets. Any contributions ordered pursuant to this subrule shall be deemed collected prior to the collection of any fines, surcharge or restitution.

13.9(4) If an applicant's household income exceeds 185 percent of the DHHS poverty income guidelines and the applicant is found to be partially indigent, the applicant shall during the pendency of the case contribute at least \$300 for advance recovery of appointed attorney fees. The court may require the applicant to contribute a greater sum to the cost of the legal representation based on the value of the applicant's household assets. Any contributions ordered pursuant to this subrule shall be deemed collected prior to the collection of any fines, surcharge or restitution.

13.9(5) If not found to be totally indigent as specified in subrule 13.9(1), parent(s), guardian(s), or custodian(s) of juveniles shall be required to pay in all cases for the attorney fees of the child. In delinquency cases, the child shall be required to apply any income and assets the child has toward payment of attorney fees in juvenile court in conformity with these rules. In juvenile proceedings, the income and assets and income of both parents shall be considered in evaluating any sums to be contributed to the cost of the child's legal representation. If the child's parents are divorced, the court shall require each parent to contribute to the extent of the parent's ability to do so. Income received by a child under a conservatorship or as the beneficiary of trust proceeds may be utilized to contribute to the cost of the child's legal representation.

Any contributions ordered pursuant to this subrule shall be deemed collected prior to the collection of any fines, surcharge or restitution.

493—13.10(13B,815) Payment procedure.

13.10(1) An applicant who has been determined to be eligible for appointed counsel shall, during the pendency of the case, pay any sums ordered by the court to the office of the clerk of the district court.

13.10(2) When an applicant is determined to be partially indigent, the court shall determine, in writing, the repayment schedule the applicant shall follow during the pendency of the case. The repayment schedule may prescribe a payment of one specific sum, or the payment of a minimum number of installment sums with the final payment to be made at the earliest possible point in the proceedings.

13.10(3) Any sum ordered by the court shall be paid by the applicant prior to the date of sentencing. If the applicant is acquitted or the charges are dismissed, the applicant shall pay the sum ordered by the court within 30 days of the acquittal or the dismissal of the charges, unless the court finds good cause to waive the repayment. The willful failure of a person ordered by the court to make the payment(s) shall be grounds for the court to find the person in contempt of court.

13.10(4) If the applicant is employed, the applicant shall execute an assignment of the applicant's wages. A portion of the applicant's wages, as determined by the court, may be paid to the office of the clerk of the district court for advance recovery of the appointed attorney fees.

13.10(5) The clerk of the district court shall credit any sums paid by the person receiving appointed counsel against the appointed attorney fees accrued in the case. If the sums paid by the person exceed the amount awarded for appointed attorney fees, the excess sums shall be credited on other defense costs that would otherwise be paid. Other defense costs include transcripts, witness fees and expenses, and any other goods or services required by law to be provided to an indigent person. Any remaining sums shall be refunded to the person by the clerk of court.

13.10(6) The clerk of court in receiving such payments during the pretrial phase of the proceedings shall code the payments so that a fair tracking of the pretrial phase payments may be made to distinguish them from postcase payments for restitution. The applicant or the applicant's parent(s), guardian(s), or custodian(s) shall be given credit for any pretrial phase payments that have been made against any restitution ordered.

493—13.11(17A) Appeal rights. Any person who has been denied appointed counsel may appeal the decision and file a written request with the court for a judicial review of the determination.

493—13.12(13B,22,815) Records. The financial statement shall be retained in the applicant's court file. Information contained in the financial statement is considered open information and may be used to verify the applicant's financial circumstances with other federal or state agencies, employers, financial institutions, or other person(s) or entities.

These rules are intended to implement Iowa Code sections 13B.1(3), 13B.10, 815.9, 815.9A, 815.10, and 815.10A.

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